IN *MURPHY OIL*, DIVIDED SUPREME COURT ALLOWS EMPLOYERS TO FORCE EMPLOYEES TO ARBITRATE DISPUTES THROUGH INDIVIDUAL ARBITRATION

On May 21, 2018, a 5-4 majority on the U.S. Supreme Court held that the National Labor Relations Act ("NLRA") does not prohibit companies from inserting arbitration clauses into the fine print of employment contracts that waive employees' rights to enter into joint or class action lawsuits against their employer. The case, *Epic Systems Corp. v. Lewis*, 584 U.S. ___ (2018), consolidated three similar cases from the Seventh, Fifth, and Ninth Circuits, and is commonly referred to as *Murphy Oil*. Justice Neil Gorsuch, appointed by President Donald Trump in 2018, wrote the opinion of the Court, while Justice Ruth Bader Ginsburg dissented.

The plaintiffs were a collection of employees who brought a class action suit against their employers for a variety of breach of contract and Fair Labor Standards Act claims. The employers moved to arbitrate, but the employees argued that "savings" clause in the Federal Arbitration Act ("FAA") rendered the arbitration clauses unenforceable because they violate the NLRA, which guarantees employees the right to engage in concerted activity for mutual aid and protection (which the employees argued includes joining class action suits against their employers to protect their rights). The employers argued that the FAA requires arbitration clauses in contracts to be granted a high level of deference, and that a conflict between them and another federal law can only be found if the law expressly states one, which the NLRA does not.

Justice Gorsuch endorsed the employers' arguments, holding that employees may not form class action lawsuits against their employers if their contracts include individual arbitration clauses. Justice Gorsuch reasoned that the NLRA does not supplant contractual obligations of the parties under the FAA, and that absent express preemption of arbitration agreements by the law, the parties must arbitrate their disputes if the employment contracts contained the provision.

In a dissent joined by Justices Breyer, Sotomayor, and Kagan, Justice Ginsburg labeled the Court's decision "egregiously wrong." Justice Ginsburg wrote that the NLRA precludes companies from inserting mandatory arbitration clauses into employment contracts because they interfere with the right of employees to band together against unfair employment practices. In her dissent, she made specific reference to the history of unfair practices that led to the adoption of the NLRA and similar statutes, and stated that the Court's decision in this case violates the spirit and purpose of those laws. The inequality of bargaining power between an employer and individual employees, Justice Ginsburg wrote, is precisely what the NLRA and other laws seek to resolve.

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Dated: June 20, 2018

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